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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JEFFREY KATZ, individually and on) Case No. 3:21-cv-5358
behalf of all others similarly situated,)

Plaintiff,)

vs.)

OPENMED INC.; DOES 1 through)
10, inclusive,)
Defendant(s).)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff, JEFFREY KATZ (“Plaintiff”), on behalf of himself and all others
similarly situated, alleges the following upon information and belief based upon
personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated
seeking damages and any other available legal or equitable remedies resulting from
the illegal actions of OPENMED INC. (“Defendant”), in negligently, knowingly,
and/or willfully contacting Plaintiff via “telephone facsimile machine” in violation

1 of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”),
2 thereby causing Plaintiff and all others similarly situated to incur the costs of
3 receiving unsolicited advertisement messages via “telephone facsimile machines”
4 and invading their privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
7 a resident of California, seeks relief on behalf of a Class, which will result in at
8 least one class member belonging to a different state than that of Defendant, a
9 company with its principal place of business and State of Incorporation in Florida
10 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of
11 the TCPA, which, when aggregated among a proposed class in the thousands,
12 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
13 diversity jurisdiction and the damages threshold under the Class Action Fairness
14 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

15 3. Venue is proper in the United States District Court for the Northern
16 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
17 business within the state of California and Plaintiff resides within this District.

18 **PARTIES**

19 4. Plaintiff, JEFFREY KATZ (“Plaintiff”), is a natural person residing
20 in San Francisco County, California and is a “person” as defined by 47 U.S.C. §
21 153 (39).

22 5. Defendant, OPENMED (“Defendant” or “DEFENDANT”), is a
23 marketer of medical products, and is a “person” as defined by 47 U.S.C. § 153 (39).

24 6. The above-named Defendant, and its subsidiaries and agents, are
25 collectively referred to as “Defendants.” The true names and capacities of the
26 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
27 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
28 names. Each of the Defendants designated herein as a DOE is legally responsible

1 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
2 Complaint to reflect the true names and capacities of the DOE Defendants when
3 such identities become known.

4 7. Plaintiff is informed and believes that at all relevant times, each and
5 every Defendant was acting as an agent and/or employee of each of the other
6 Defendants and was acting within the course and scope of said agency and/or
7 employment with the full knowledge and consent of each of the other Defendants.
8 Plaintiff is informed and believes that each of the acts and/or omissions complained
9 of herein was made known to, and ratified by, each of the other Defendants.

10 **FACTUAL ALLEGATIONS**

11 8. Beginning on or around April 5, 2020, Defendant contacted Plaintiff
12 on his telephone facsimile number ending in -3052 in an effort to sell or solicit its
13 services.

14 9. Defendant contacted Plaintiff between on or around December of
15 2016 and April of 2017 in an effort to solicit its business.

16 10. Defendant's messages constituted "telephone solicitation" as defined
17 by the TCPA, 47 U.S.C. § 227(a)(4) and "unsolicited advertisement" as defined by
18 the TCPA, 47 U.S.C. § 227(a)(5).

19 11. Defendant used an "telephone facsimile machine" as defined by 47
20 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its business
21 services.

22 12. Defendant's calls constituted calls that were not for emergency
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 13. Defendant's calls were placed to telephone facsimile numbers
25 assigned to a telephone service for which Plaintiff incurs a charge for incoming
26 messages.

27 14. Plaintiff is not a customer of Defendant's services and has never
28 provided any personal information, including his telephone facsimile number(s), to

1 Defendant for any purpose whatsoever. Accordingly, Defendant never received
2 Plaintiff's "prior express consent" to receive calls using a telephone facsimile
3 machine pursuant to 47 U.S.C. § 227(b)(1)C).

4 **CLASS ALLEGATIONS**

5 15. Plaintiff brings this action on behalf of himself and all others similarly
6 situated, as a member of the proposed class (hereafter "The Class") defined as
7 follows:

8
9 All persons within the United States who received any
10 telephone facsimile messages from Defendant to said
11 person's telephone facsimile number made through the
12 use of any telephone facsimile machine and such person
13 had not previously consented to receiving such messages
14 within the four years prior to the filing of this Complaint

15 16. Plaintiff represents, and is a member of, The Class, consisting of All
16 persons within the United States who received any telephone facsimile messages
17 from Defendant to said person's telephone facsimile number made through the use
18 of any telephone facsimile machine and such person had not previously not
19 provided their telephone facsimile number to Defendant within the four years prior
20 to the filing of this Complaint.

21 17. Defendant, its employees and agents are excluded from The Class.
22 Plaintiff does not know the number of members in The Class, but believes the Class
23 members number in the thousands, if not more. Thus, this matter should be certified
24 as a Class Action to assist in the expeditious litigation of the matter.

25 18. The Class is so numerous that the individual joinder of all of its
26 members is impractical. While the exact number and identities of The Class
27 members are unknown to Plaintiff at this time and can only be ascertained through
28 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
The Class includes thousands of members. Plaintiff alleges that The Class members
may be ascertained by the records maintained by Defendant.

19. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their telephone facsimile numbers thereby causing Plaintiff and Class members to incur certain charges or reduced telephone facsimile time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.

20. Common questions of fact and law exist as to all members of The Class which predominate over any questions affecting only individual members of The Class. These common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant sent telephone facsimile messages (other than for emergency purposes or made with the prior express consent of the called party) to a Class member using any telephone facsimile machine to any telephone number assigned to a telephone facsimile service;
- b. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

21. As a person who received messages from Defendant using a telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.

22. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

23. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford
 2 individual litigation, the court system could not. It would be unduly burdensome
 3 to the courts in which individual litigation of numerous issues would proceed.
 4 Individualized litigation would also present the potential for varying, inconsistent,
 5 or contradictory judgments and would magnify the delay and expense to all parties
 6 and to the court system resulting from multiple trials of the same complex factual
 7 issues. By contrast, the conduct of this action as a class action presents fewer
 8 management difficulties, conserves the resources of the parties and of the court
 9 system, and protects the rights of each Class member.

10 24. The prosecution of separate actions by individual Class members
 11 would create a risk of adjudications with respect to them that would, as a practical
 12 matter, be dispositive of the interests of the other Class members not parties to such
 13 adjudications or that would substantially impair or impede the ability of such non-
 14 party Class members to protect their interests.

15 25. Defendant has acted or refused to act in respects generally applicable
 16 to The Class, thereby making appropriate final and injunctive relief with regard to
 17 the members of the California Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 26. Plaintiff repeats and incorporates by reference into this cause of
 22 action the allegations set forth above at Paragraphs 1-27.

23 27. The foregoing acts and omissions of Defendant constitute numerous
 24 and multiple negligent violations of the TCPA, including but not limited to each
 25 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26 28. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
 27 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
 28

damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

29. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-27.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

34. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff reserves their right to a jury on all issues so triable.

Respectfully Submitted this 13th day of July, 2021.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: s/ Todd M. Friedman

Todd M. Friedman

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Attorney for Plaintiff